JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, September 14, 2005
11:00 a.m. – 12:30 p.m.
Morris Hall
(17 HOB)

Allan G. Bense
Speaker

David Simmons
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time:	Wednesday, September 14, 2005 11:00 am
End Date and Time:	Wednesday, September 14, 2005 12:30 pm
Location:	Morris Hall (17 HOB)
Duration:	1.50 hrs

Status of the implementation of the following constitutional revisions approved by the voters in November 2004:

Constitutional Revision 7—Patients' right to know about adverse medical incidents

Constitutional Revision 8—Repeated medical malpractice

Discussion of proposal to revise Florida Constitution

Recap and discussion of matters related to the constitutional petition process

Status of committee interim projects

Discussion of tort reform

NOTICE FINALIZED on 09/02/2005 10:24 by Williams.Tanesha

Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)
September 14, 2005
11:00 a.m. – 12:30 p.m.

Agenda

1. **Call to order**

2. **Roll call**

3. **Welcome and opening remarks**

   Representative David Simmons, Chair

4. **Status of the implementation of constitutional revision 7 - Patients' right to know**
   [Tab "A"]

   Presenters: *Bill Bell, General Counsel, Florida Hospital Association*

   Paul Jess, Deputy Executive Director, Academy of Florida Trial Lawyers

5. **Status of the implementation of constitutional revision 8 - Repeated medical malpractice**
   [Tab "B"]

   Presenters: *John Knight, General Counsel, Florida Medical Association*

   Paul Jess, Deputy Executive Director, Academy of Florida Trial Lawyers

6. **Discussion of proposal to revise the Florida Constitution**

7. **Recap and discussion of matters related to the constitutional petition process**
   [Tab "C"]

8. Status of committee interim projects

9. Discussion of tort reform

10. Closing remarks

Representative David Simmons, Chair

TAB INDEX

TAB "A" **Implementation of Constitutional Revision 7**

- **Chapter 2005-265 / SB 938**
- **Bowen, Green & Nicely vs. Notami Hospital case**

TAB "B" **Implementation of Constitutional Revision 8**

- **Chapter 2005-266 / SB 940**

TAB "C" **Constitutional Petition Process**

- **HJR 1723 - Requiring Broader Public Support for Constitutional Amendments or Revisions (PASSED)**
- **HJR 1741 - Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Fiscal Impact (FAILED)**
- **HJR 1727 - Permissible Subject Matter of Constitutional Revision or Amendments Proposed by Initiative (FAILED)**

Tab A

CHAPTER 2005-265

Committee Substitute for Senate Bill No. 938

An act relating to adverse medical incidents; creating s. 381.028, F.S.; providing a short title; providing a purpose; defining terms; specifying patients' right of access to records relating to an adverse medical incident; prohibiting the disclosure of the identity of certain patients; providing for maintaining privacy restrictions imposed by federal law; providing for the applicability of s. 25, Art. X of the State Constitution; providing for applicability of this section; providing restrictions upon the use of the records; providing for the identification and production of the records; providing for fees charged for copies of records; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.028, Florida Statutes, is created to read:

381.028 Adverse medical incidents.—

(1) SHORT TITLE.—This section may be cited as the "Patients' Right-to-Know About Adverse Medical Incidents Act."

(2) PURPOSE.—It is the purpose of this act to implement s. 25, Art. X of the State Constitution. The Legislature finds that this section of the State Constitution is intended to grant patient access to records of adverse medical incidents, which records were made or received in the course of business by a health care facility or provider, and not to repeal or otherwise modify existing laws governing the use of these records and the information contained therein. The Legislature further finds that all existing laws extending criminal and civil immunity to persons providing information to quality-of-care committees or organizations and all existing laws concerning the discoverability or admissibility into evidence of records of an adverse medical incident in any judicial or administrative proceeding remain in full force and effect.

(3) DEFINITIONS.—As used in s. 25, Art. X of the State Constitution and this act, the term:

(a) "Agency" means the Agency for Health Care Administration.

(b) "Adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider which caused or could have caused injury to or the death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, incidents that are reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee or any representative of any such committee.

(c) "Department" means the Department of Health.

(d) "Have access to any records" means, in addition to any other procedure for producing the records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records that have been made publicly available by publication or on the Internet may be provided by reference to the location at which the records are publicly available.

(e) "Health care provider" means a physician licensed under chapter 458, chapter 459, or chapter 461.

(f) "Health care facility" means a facility licensed under chapter 395.

(g) "Identity" means any "individually identifiable health information" as defined by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations.

(h) "Patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(i) "Privacy restrictions imposed by federal law" means the provisions relating to the disclosure of patient privacy information under federal law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, and its implementing regulations, the Federal Privacy Act, 5 U.S.C. s. 552(a), and its implementing regulations, and any other federal law, including, but not limited to, federal common law and decisional law, that would prohibit the disclosure of patient privacy information.

(j) "Records" means the final report of any adverse medical incident. Medical records that are not the final report of any adverse medical incident, including drafts or other nonfinal versions; notes; and any documents or portions thereof which constitute, contain, or reflect any attorney-client communications or any attorney-client work product may not be considered "records" for purposes of s. 25, Art. X of the State Constitution and this act.

(k) "Representative of the patient" means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient's health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient's surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; or the attorney for any such person.

(4) PATIENTS' RIGHT OF ACCESS.—Patients have a right to have access to any records made or received in the course of business by a health care facility or health care provider relating to any adverse medical incident.

In providing access to these records, the health care facility or health care provider may not disclose the identity of patients involved in the incidents and shall maintain any privacy restrictions imposed by federal law.

(5) APPLICABILITY.—Section 25, Art. X of the State Constitution applies to records created, incidents occurring, and actions pending on or after November 2, 2004. Section 25, Art. X of the State Constitution does not apply to records created, incidents occurring, or actions pending before November 2, 2004. A patient requesting records on or after November 2, 2008, shall be eligible to receive records created within 4 years before the date of the request.

(6) USE OF RECORDS.—

(a) This section does not repeal or otherwise alter any existing restrictions on the discoverability or admissibility of records relating to adverse medical incidents otherwise provided by law, including, but not limited to, those contained in ss. 395.0191, 395.0193, 395.0197, 766.101, and 766.1016, or repeal or otherwise alter any immunity provided to, or prohibition against compelling testimony by, persons providing information or participating in any peer review panel, medical review committee, hospital committee, or other hospital board otherwise provided by law, including, but not limited to, ss. 395.0191, 395.0193, 766.101, and 766.1016.

(b) Except as otherwise provided by act of the Legislature, records of adverse medical incidents, including any information contained therein, obtained under s. 25, Art. X of the State Constitution, are not discoverable or admissible into evidence and may not be used for any purpose, including impeachment, in any civil or administrative action against a health care facility or health care provider. This includes information relating to performance or quality-improvement initiatives and information relating to the identity of reviewers, complainants, or any person providing information contained in or used in, or any person participating in the creation of the records of adverse medical incidents.

(7) PRODUCTION OF RECORDS.—

(a) Pursuant to s. 25, Art. X of the State Constitution, the adverse medical incident records to which a patient is granted access are those of the facility or provider of which he or she is a patient and which pertain to any adverse medical incident affecting the patient or any other patient which involves the same or substantially similar condition, treatment, or diagnosis as that of the patient requesting access.

(b)1. Using the process provided in s. 395.0197, the health care facility shall be responsible for identifying records as records of an adverse medical incident, as defined in s. 25, Art. X of the State Constitution.

2. Using the process provided in s. 458.351, the health care provider shall be responsible for identifying records as records of an adverse medical incident, as defined in s. 25, Art. X of the State Constitution, occurring in an office setting.

(c)1. Fees charged by a health care facility for copies of records requested by a patient under s. 25, Art. X of the State Constitution may not exceed the reasonable and actual cost of complying with the request, including a reasonable charge for the staff time necessary to search for records and prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means as required by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations. The health care facility may require payment, in full or in part, before acting on the records request.

2. Fees charged by a health care provider for copies of records requested by a patient under s. 25, Art. X of the State Constitution may not exceed the amount established under s. 456.057(16), which may include a reasonable charge for the staff time necessary to prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means as required by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations. The health care provider may require payment, in full or in part, before acting on the records request.

(d)1. Requests for production of adverse medical incident records shall be processed by the health care facility or health care provider in a timely manner, after having a reasonable opportunity to determine whether or not the requested record is a record subject to disclosure and to prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means.

2. A request for production of records must be submitted in writing and must identify the patient requesting access to the records by name, address, and the last four digits of the patient's social security number; describe the patient's condition, treatment, or diagnosis; and provide the name of the health care providers whose records are being sought.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.

IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, IN AND FOR COLUMBIA COUNTY, FLORIDA.

(AS CONSOLIDATED FOR DISCOVERY PURPOSES)

EVELYN BOWEN and DON BOWEN, her husband; — CASE NO. 03-207-CA

ROBERTA GREEN and ROBERT GREEN, her husband; — CASE NO 04-543-CA

JOHN C. NICELY, as Personal Representative of the Estate of CHRISTINE NICELY; — CASE NO 04-57-CA

Plaintiffs,

vs.

NOTAMI HOSPITAL OF FLORIDA, INC., d/b/a LAKE CITY MEDICAL CENTER, PENDRAK SURGICAL GROUP, P.A. AND ROBERT B. PENDRAK, M.D.,

Defendants.

_____/

ORDER ON MOTIONS RE: AMENDMENT 7

THIS CAUSE was heard by the Court on May 12, 2005, on motions of Plaintiffs and Defendant relating to the discovery of "peer review, credentialing and risk management" material and the effect of Amendment 7. Based upon the record in this cause, the materials submitted, and the argument of counsel, the Court enters this order granting discovery.

AMENDMENT 7 IS SELF-EXECUTING

Amendment 7, now Article X, Section 22, does not require implementing legislation

Section 3 of the amendment provided that the "amendment shall be effective on the date it is approved by the electorate." As stated by the Court in *Gray v. Bryant*, 125 So.2d 846, 851 (Fla. 1960):

> A basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.

In *Gray v. Bryant*, the Court held that *Fla. Const. Art.* V, Section 6 (2) which provided for one circuit judge for each 50,000 inhabitants of the circuit, was self-executing. If that type of broadly worded constitutional provision is self-executing, Amendment 7, which is much more specific is also self-executing. The Court went on to note in *Gray v. Bryant*:

> The will of the people is paramount in determining whether a constitutional provision is self-executing and the modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people 125 So 2d at 851.

"RETROACTIVITY" OF AMENDMENT 7

This Court adopts the reasoning of Judge Moxley in *McHale v. Tenewitz*, Case No.05-2003-CA-054153, Brevard County Circuit Court, a copy of which is in the record. in which he concluded:

> The Court finds that Amendment 7, now Section 22 of Article X of the Florida Constitution, is prospective in operation but is

> retrospective as it relates to extant records. This is necessary to carry out the design and purpose of this constitutional provision. The information a patient needs in order for the patient to have the opportunity to make educated decisions relating to the patient's health care treatment requires that it be applied retrospectively. After the hearing the Court conducted additional research on the issue of retrospective application. A statute is not unconstitutionally retrospective in operation unless it impairs a substantive vested right that must be more than a mere expectation based on the continuance of existing law but rather must have become a title, legal or equitable, to the present or future enforcement of a demand. *In re Trust Under Will of Martell*, 457 So.2d 1064 (Fla. 2nd DCA). There is no vested right in not having to disclose adverse medical incidents. While there may have been an expectation based on existing law prior to the Amendment to the Florida Constitution, it did not become a vested right

FLORIDA STATUTE §381.028 IS UNCONSTITUTIONAL

The 2005 Legislature enacted *Florida Statute* §381.028 in response to the passage of Amendment 7. The legislature did not attempt to "implement" Amendment 7 in enacting Section 381.028, they attempted to abolish it. For the reasons set forth below, the statute violates Article X, Section 22, and is therefore unconstitutional

"All political power is inherent in the people," Fla. Const., Art. I, § 1, and the people of Florida on November 2, 2004, by a margin of 4 to 1, voted to exercise this power and remove the shroud of secrecy surrounding medical errors. Let there be no doubt, Amendment 7 "has but one purpose–providing access to records on adverse medical incidents...." In re Advisory Opinion to the Atty. Gen. re Patients' Right To Know About Adverse Medical Incidents, 880 So.2d 617, 620 (Fla. 2004) "Unquestionably, the amendment would affect

sections 395.0193(8) and 766 101(5) of the Florida Statutes (2003), which currently exempt the records of investigations, proceedings, and records of the peer review panel from discovery in a civil or administrative action. Indeed, this is a primary purpose of the amendment." Id. at 620-21.

"A statute enacted by the Legislature may not constrict a right granted under the ultimate authority of the Constitution." Austin v. State ex rel. Christian, 310 So.2d 289, 293 (Fla. 1975). See also In re Advisory Opinion to Atty. Gen., Limitation of Non-Economic Damages in Civil Actions, 520 So 2d 284, 287 (Fla.1988) ("statutes . . . which are inconsistent with the constitution, if it is amended, will simply have to give way.... [P]roposed amendments to the constitution are not required to be consistent with statutory law"); Henderson v. State, 20 So.2d 649, 651 (Fla. 1945) ("[w]hen the provisions of statute collide with provisions of the Constitution the statute must give way"); State ex rel. Curley v. McGeachy, 6 So.2d 823, 826 (Fla. 1942) ("[t]he provisions of the Constitution will always prevail over statutes where there is conflict between the two").

As previously stated by the Supreme Court of Florida, "[w]e heartily reiterate the view that sovereignty resides in the people and that they may modify and change the constitution as they wish so long as they do not run afoul of the Federal Constitution.... [S]tate constitutions . . . are limitations upon the power of the state legislature." Peters v. Meeks, 163 So.2d 753, 755 (Fla. 1964) (citation and internal quotation marks omitted) (emphasis added).

> [W]e are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they deep within the confines of the Federal Constitution..... [O]ur first duty is to uphold their action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval

Gray v. Golden, 89 So.2d 785, 790 (Fla. 1956).

> "To the judges belongs the power of expounding the laws; and although in the discharge of that duty they may render a law inoperative by declaring it unconstitutional, it does not arise from any supremacy which the judiciary possesses over the Legislature, but from the supremacy of the constitution over both."

Sebring Airport Authority v. McIntyre, 783 So.2d 238, 244 n 5 (Fla. 2001) (citation omitted) (emphasis in original).

> [T]o the extent . . . that . . . an act violates expressly or clearly implied mandates of the Constitution, the act must fall, not merely because the courts so decree, but because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary

Holley v. Adams, 238 So.2d 401, 405 (Fla. 1970) (quoting Amos v. Mathews, 99 Fla 1, 126 So. 308 (1930)).

"Article X, Section 22, provides that "patients have a right to have access to *any records* made or received in the course of business by a healthcare facility or provider relating to any adverse medical incident." Section 22(c)(3) broadly defines "adverse medical incident" as *including but not limited to* records coming out of "facility peer review, risk management, quality assurance, credentials, or similar committees, or any representative of any such

committees." Section 381.028(3)(j) on the other hand, attempts to limit production only to a "final report".

Under Article X, Section 22, patients, actual or prospective, are entitled to any of the records described above. The legislature has attempted to limit disclosure to only the final report relating to same or substantially similar condition, treatment, or diagnosis with that of the patient requesting record access.

Article X, Section 22, contains no limitation on the time frame within which records were generated. Section 381.028(5) attempts to limit production only to records generated after November 2, 2004.

And finally, Section 381.028(6) provides that Amendment 7 will have no effect on any of the existing privilege statutes. This is contrary to the stated purpose of the amendment, and the Supreme Court discussion in its opinion authorizing Amendment 7 to be placed on the ballot. 880 So.2d at 620-21. Because of these limitations, the legislature has impermissibly restrained rights granted under the Florida Constitution to which all statutes must yield

Florida Statutes, Section 381.028 is therefore unconstitutional.

OTHER ISSUES

The Court has considered other objections to production of peer review materials raised by Defendant and briefed by the parties and finds that in light of Amendment 7, none of the grounds are valid

ORDER

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant, LAKE CITY MEDICAL CENTER, shall produce any records made or received in the course of business relating to any adverse medical incident involving Dr. Pendrak's care and treatment of patients at LAKE CITY MEDICAL CENTER, as that term is defined in Article X, Section 22 (c)(3) of the Florida Constitution.

2. Mr. Karsner is instructed to answer the questions propounded to him at deposition which, prior to the passage of Amendment 7, sought privileged information.

3. The Defendant shall comply with this Order within 30 days, unless within that time appellate review is sought, in which case this Order shall be stayed pending further of this Court or the Court of Appeals.

DONE AND ORDERED in Lake City, Columbia County, Florida, on this 15th day of ~~June~~ July, 2005.

Original Sign By
E. VERNON DOUGLAS
Circuit Judge

E. VERNON DOUGLAS, CIRCUIT JUDGE

Copies furnished to:

See attached Mailing List

Tab B

CHAPTER 2005-266

Committee Substitute for Senate Bill No. 940

An act relating to repeated medical malpractice; amending s. 456.041, F.S.; requiring the Department of Health to verify information submitted by a person who applies for initial licensure, or renewal of licensure, as a physician; creating s. 456.50, F.S.; defining terms; prescribing acts that constitute repeated medical malpractice; providing for review of acts and determination by the Board of Medicine and the Board of Osteopathic Medicine; authorizing the Board of Medicine and the Board of Osteopathic Medicine to require licensees and applicants for licensure to provide a copy of the record of the trial of any medical malpractice judgment involving an incident occurring on or after a specified date; extending the 90-day requirement for granting or denying a complete allopathic or osteopathic licensure application to 180 days; amending s. 458.331, F.S.; redefining acts of medical malpractice, gross medical malpractice, or repeated medical malpractice which constitute grounds for disciplinary action against a physician; amending s. 459.015, F.S.; redefining acts of medical malpractice, gross medical malpractice, or repeated medical malpractice which constitute grounds for disciplinary action against an osteopathic physician; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 456.041, Florida Statutes, is amended to read:

456.041 Practitioner profile; creation.—

(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile uniformly any information submitted under s. 456.039(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information.

(b) Beginning July 1, 2005, the department shall verify the information submitted by the applicant under s. 456.039 concerning disciplinary history and medical malpractice claims at the time of initial licensure and license renewal using the National Practitioner Data Bank. The physician profiles shall reflect the disciplinary action and medical malpractice claims as reported by the National Practitioner Data Bank.

(c)~~(b)~~ Within 30 calendar days after receiving an update of information required for the practitioner's profile, the department shall update the practitioner's profile in accordance with the requirements of subsection (7).

Section 2. Section 456.50, Florida Statutes, is created to read:

456.50 Repeated medical malpractice.—

(1) For purposes of s. 26, Art. X of the State Constitution and ss. 458.331(1)(t), (4), and (5) and 459.015(1)(x), (4), and (5):

(a) "Board" means the Board of Medicine, in the case of a physician licensed pursuant to chapter 458, or the Board of Osteopathic Medicine, in the case of an osteopathic physician licensed pursuant to chapter 459.

(b) "Final administrative agency decision" means a final order of the licensing board following a hearing as provided in s. 120.57(1) or (2) or s. 120.574 finding that the licensee has violated s. 458.331(1)(t) or s. 459.015(1)(x).

(c) "Found to have committed" means the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration.

(d) "Incident" means the wrongful act or occurrence from which the medical malpractice arises, regardless of the number of claimants or findings. For purposes of this section:

1. A single act of medical malpractice, regardless of the number of claimants, shall count as only one incident.

2. Multiple findings of medical malpractice arising from the same wrongful act or series of wrongful acts associated with the treatment of the same patient shall count as only one incident.

(e) "Level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in s. 766.102.

(f) "Medical doctor" means a physician licensed pursuant to chapter 458 or chapter 459.

(g) "Medical malpractice" means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Only for the purpose of finding repeated medical malpractice pursuant to this section, any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice as defined in this paragraph, shall be considered medical malpractice if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.

(h) "Repeated medical malpractice" means three or more incidents of medical malpractice found to have been committed by a medical doctor. Only an incident occurring on or after November 2, 2004, shall be considered an incident for purposes of finding repeated medical malpractice under this section.

(2) For purposes of implementing s. 26, Art. X of the State Constitution, the board shall not license or continue to license a medical doctor found to have committed repeated medical malpractice, the finding of which was

based upon clear and convincing evidence. In order to rely on an incident of medical malpractice to determine whether a license must be denied or revoked under this section, if the facts supporting the finding of the incident of medical malpractice were determined on a standard less stringent than clear and convincing evidence, the board shall review the record of the case and determine whether the finding would be supported under a standard of clear and convincing evidence. Section 456.073 applies. The board may verify on a biennial basis an out-of-state licensee's medical malpractice history using federal, state, or other databases. The board may require licensees and applicants for licensure to provide a copy of the record of the trial of any medical malpractice judgment, which may be required to be in an electronic format, involving an incident that occurred on or after November 2, 2004. For purposes of implementing s. 26, Art. X of the State Constitution, the 90-day requirement for granting or denying a complete allopathic or osteopathic licensure application in s. 120.60(1) is extended to 180 days.

Section 3. Paragraph (t) of subsection (1) and subsections (4), (5), and (10) of section 458.331, Florida Statutes, are amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(t) Notwithstanding s. 456.072(2) but as specified in s. 456.50(2):

1. Committing medical malpractice as defined in s. 456.50 ~~Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances~~. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. ~~As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for~~ Medical malpractice ~~within the previous 5-year period resulting in indemnities being paid in excess of $50,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, "gross malpractice" or "the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances,"~~ shall not be construed ~~so as~~ to require more than one instance, event, or act.

2. Committing gross medical malpractice.

3. Committing repeated medical malpractice as defined in s. 456.50. A person found by the board to have committed repeated medical malpractice based on s. 456.50 may not be licensed or continue to be licensed by this state to provide health care services as a medical doctor in this state.

Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this

paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed "gross medical malpractice," "repeated medical malpractice," or "medical malpractice," ~~"failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances,"~~ or any combination thereof, and any publication by the board must so specify.

(4) The board shall not reinstate the license of a physician, or cause a license to be issued to a person it deems or has deemed unqualified, until such time as it is satisfied that he or she has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of medicine. However, the board may not issue a license to, or reinstate the license of, any medical doctor found by the board to have committed repeated medical malpractice based on s. 456.50, regardless of the extent to which the licensee or prospective licensee has complied with all terms and conditions set forth in the final order and is capable of safely engaging in the practice of medicine.

(5) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license. "Gross medical malpractice," "repeated medical malpractice," and "medical malpractice," ~~"failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar circumstances"~~ under paragraph (1)(t) ~~subsection (10)~~ shall each be considered distinct types of violations requiring specific individual guidelines.

~~(10) A recommended order by an administrative law judge, or a final order of the board finding a violation under this section shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances" or any combination thereof, and any publication by the board shall so specify.~~

Section 4. Paragraph (x) of subsection (1) and subsections (4) and (5) of section 459.015, Florida Statutes, are amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(x) Notwithstanding s. 456.072(2) but as specified in s. 456.50(2):

1. Committing medical ~~Gross or repeated~~ malpractice as defined in s. 456.50 ~~or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar~~

~~osteopathic physician as being acceptable under similar conditions and circumstances.~~ The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. ~~As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for~~ Medical malpractice ~~within the previous 5-year period resulting in indemnities being paid in excess of $50,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the osteopathic physician. As used in this paragraph, "gross malpractice" or "the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances"~~ shall not be construed ~~so as~~ to require more than one instance, event, or act.

2. Committing gross medical malpractice.

3. Committing repeated medical malpractice as defined in s. 456.50. A person found by the board to have committed repeated medical malpractice based on s. 456.50 may not be licensed or continue to be licensed by this state to provide health care services as a medical doctor in this state.

Nothing in this paragraph shall be construed to require that an osteopathic physician be incompetent to practice osteopathic medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed "gross medical malpractice," "repeated medical malpractice," or "medical malpractice," ~~"failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances,"~~ or any combination thereof, and any publication by the board shall so specify.

(4) The board shall not reinstate the license or certificate of an osteopathic physician, or cause a license or certificate to be issued to a person it has deemed unqualified, until such time as it is satisfied that he or she has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of osteopathic medicine. However, the board may not issue a license to, or reinstate the license of, any medical doctor found by the board to have committed repeated medical malpractice based on s. 456.50, regardless of the extent to which the licensee or prospective licensee has complied with all terms and conditions set forth in the final order and is capable of safely engaging in the practice of osteopathic medicine.

(5) The board shall, by rule, establish comprehensive guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines shall establish offenses and circumstances for which revocation will be presumed to be appropriate, as well as offenses and circumstances for which suspension for particular periods of time will be presumed to be appropriate. The guidelines shall also establish minimum and maximum fines, periods of supervision or probation, or conditions of probation and conditions for reissuance of a license with respect to particular circumstances and offenses. "Gross medical malpractice," "repeated medical mal-

practice," and "medical malpractice," ~~"failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances"~~ under paragraph (1)(x) shall each be considered distinct types of violations requiring specific individual guidelines.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.

Tab C

House Joint Resolution

A joint resolution proposing an amendment to Section 5 of Article XI of the State Constitution to require that any proposed amendment to or revision of the State Constitution be approved by at least 60 percent of the electors voting on the measure.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 5 of Article XI of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2006:

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.--

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

(c) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(d) Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

(e) Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

BE IT FURTHER RESOLVED that the title and substance of the amendment proposed herein shall appear on the ballot as follows:

REQUIRING BROADER PUBLIC SUPPORT FOR

CONSTITUTIONAL AMENDMENTS OR REVISIONS

Proposes an amendment to Section 5 of Article XI of the State Constitution to require that any proposed amendment to or revision of the State Constitution, whether proposed by the Legislature, by initiative, or by any other method, must be approved by at least 60 percent of the voters of the state voting on the measure, rather than by a simple majority. This proposed amendment would not change the current requirement that a proposed constitutional amendment imposing a new state tax or fee be approved by at least 2/3 of the voters of the state voting in the election in which such an amendment is considered.

House Joint Resolution

A joint resolution proposing an amendment to Section 7 of Article XI of the State Constitution to require approval by at least two-thirds of the voters of any proposed amendment or revision to the State Constitution imposing or authorizing imposition of any new tax or fee, increasing or authorizing an increase in any existing tax or fee, or imposing a significant fiscal impact on the state, counties, school districts, municipalities, or special districts, and to delete a provision limiting such voting requirement to only new state taxes or fees.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 7 of Article XI of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2006:

ARTICLE XI

AMENDMENTS

SECTION 7. Tax, ~~or~~ fee, or significant fiscal impact limitation.--Notwithstanding Article X, Section 12(d) of this constitution:

(a) Any amendment or revision to this constitution that imposes or authorizes the imposition of a~~, no~~ new ~~State~~ tax or fee or increases or authorizes an increase in an existing tax or fee shall become effective only if ~~be imposed on or after November 8, 1994 by any amendment to this constitution unless~~

the proposed amendment or revision is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment or revision is considered. This subsection shall apply to the imposition or authorization of an existing tax or fee that is not currently being collected, to an increase in the rate of an existing tax or fee, and to the modification of an exemption, exclusion, deduction, credit, or other mechanism which currently eliminates or reduces the liability of a person or entity for an existing tax or fee. For purposes of this section, the phrase "new ~~State~~ tax or fee" means ~~shall mean~~ any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994, including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. The phrase "new tax or fee" also means any tax or fee which would produce revenue for a county, school district, municipality, or special district. ~~This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and~~ Any such proposed amendment or revision which fails to gain the two-thirds vote required hereby shall be null, void, and without effect.

(b) Any amendment or revision to this constitution that imposes a significant fiscal impact on the state, counties, school districts, municipalities, or special districts in the aggregate shall become effective only if the proposed amendment

or revision is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment or revision is considered. For purposes of this section, the phrase "significant fiscal impact" means a collective fiscal impact in any state fiscal year in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the general revenue fund, as established in the general appropriations act approved by the governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered. The dollar amount for the determination of a significant fiscal impact shall be certified pursuant to the process established in general law. Any such proposed amendment or revision which fails to gain the two-thirds vote required hereby shall be null, void, and without effect.

BE IT FURTHER RESOLVED that the title and substance of the amendment proposed herein shall appear on the ballot as follows:

TWO-THIRDS VOTE FOR CONSTITUTIONAL AMENDMENTS INCREASING OR IMPOSING TAXES, FEES, OR A SIGNIFICANT FISCAL IMPACT

Proposes an amendment to Section 7 of Article XI of the State Constitution to require approval by at least two-thirds of the voters of the state voting in an election on any proposed amendment or revision to the State Constitution imposing or authorizing imposition of any new tax or fee, increasing or authorizing an increase in any existing tax or fee, or imposing a significant fiscal impact on the state, counties, school districts, municipalities, or special districts, such proposal to amend and expand the existing two-thirds vote requirement

adopted by Florida voters in 1996 but currently applying only to proposed amendments that impose a new state tax or fee, all other proposed amendments or revisions currently requiring approval by only a simple majority of those voting on the amendment or revision; to delete a provision limiting application of such voting requirement to only state taxes or fees; to extend the existing two-thirds vote requirement to taxes and fees producing revenue for counties, municipalities, school districts, and special districts rather than only the state; to expand the definition of the term "new tax or fee" to include revenue-producing exactions for counties, municipalities, school districts, and special districts; and to define the term "significant fiscal impact" to mean having a collective annual fiscal impact in any state fiscal year in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the general election in which such proposed amendment or revision is considered.

House Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article XI of the State Constitution to provide the permissible subject matter of revisions or amendments to the State Constitution proposed by initiative.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 3 of Article XI of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2006:

ARTICLE XI

AMENDMENTS

SECTION 3. Initiative.--

(a) The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. Any revision or amendment proposed by initiative shall:

(1) Amend or repeal an existing section of this constitution on the same subject and matter;

(2) Address a basic or fundamental right of a citizen of this state; or

(3) Change the basic structure of state government as established in Article II, Article III, Article IV, or Article V

of this constitution, except that no revision or amendment shall deprive the branches of government of any existing powers granted in these articles.

(b) The initiative power ~~It~~ may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

BE IT FURTHER RESOLVED that the title and substance of the amendment proposed herein shall appear on the ballot as follows:

PERMISSIBLE SUBJECT MATTER OF CONSTITUTIONAL REVISIONS OR AMENDMENTS PROPOSED BY INITIATIVE

Proposes an amendment to Section 3 of Article XI of the State Constitution to provide that a constitutional revision or amendment proposed by initiative must amend or repeal an existing section of the State Constitution on the same subject and matter; must address a basic or fundamental right of a citizen of this state; or must change the basic structure of state government as established in Article II, Article III, Article IV, or Article V of the State Constitution, except that no revision or amendment may deprive the branches of government of any existing powers granted in these articles.